MOTION FILED
APR 4 1985

No. 84-1402

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

A. L. ADAMS CONSTRUCTION CO.

Petitioner

v.

GEORGIA POWER COMPANY

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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AMICUS CURIAE BRIEF

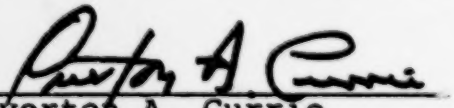
Georgia Branch, Associated General Contractors of America, Inc. respectfully moves this court for leave to file the accompanying brief in this case as amicus curiae. The consent of the attorney for the petitioner herein has been obtained, but the attorney for the respondent herein has not consented to the filing of a brief by Georgia

Branch, Associated General Contractors of America, Inc. as amicus curiae.

The applicant, Georgia Branch, Associated General Contractors of America, Inc. has an interest in this case in that it is an association of general contractors interested in the reasonable, fair, and practical interpretation and application of laws affecting the construction industry and in opposing unauthorized fetters on full and free competition among the members of the industry.

The proposed amicus curiae brief accompanies this motion.

Respectfully submitted,



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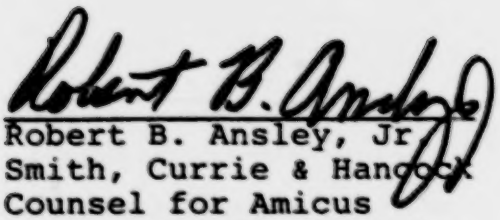

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CONSENT TO FILING OF
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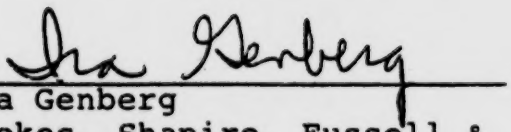
Pursuant to Rule 36, the parties in this matter hereby consent to the filing by Georgia Branch, Associated General Contractors of America, Inc. of a brief as amicus curiae.



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BRIEF OF AMICUS CURIAE

INTEREST OF THE GEORGIA BRANCH, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

The Georgia Branch, Associated General Constractors of America, Inc. (hereinaiter Georgia Branch) is an association of general contractors dedicated to the reasonable, fair and practical interpretation and application of laws affecting building and construction

contracts and in promoting full, free and fair competition in the building and construction industry. The members of the Georgia Branch are approximately 160 general contractors located throughout Georgia and several other states that perform over $900 million of building and construction work annually on private and public projects. The petitioner, A. L. Adams Construction Co., is a member of the association.

The Georgia Branch has a vital interest in seeking review of the lower court's decision, which, if left undisturbed, would authorize a significant restraint on competition and preference for a particular segment of the building and construction industry consisting of contractors

utilizing union agreements without any legislative requirement and policy for such restraint and preference.

SUMMARY OF ARGUMENT

The decision below raises issues of great importance. The Eleventh Circuit held that an owner such as the public utility company involved in this action is exempt from the anti-trust laws when it restricts its contracts on a several billion dollar project to union contractors. The decision below thereby permitted unearned preference in a significant national market to a particular group of contractors at the expense of other contractors in the industry and at the expense of the public in the form of

higher prices. The decision below adopted an unwarranted interpretation and application of Section 8(f) of the National Labor Relations Act which is unsupported by the clear language of Section 8(f). We do not here take up the merits except to support the views expressed by the Petitioner.

ARGUMENT: REASONS FOR GRANTING THE WRIT

Section 8(f) of the NLRA provides in part, that:

> It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor

> organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in subsection (a) of this section as an unfair labor practice,)...

29 U.S.C. Section 158(f). (Emphasis added.)

The building and construction industry and the employees engaged in such industry are a well-defined segment of our society that has been traditionally recognized as distinctly different from owners such as public utilities.

In the instant case the public utility was primarily engaged in business other than building and construction. Its primary objective and purpose was to provide power to

homes and businesses - not to build and construct facilities. To perform the building and construction function it employed through invitations to bid and contracts contractors and builders. The decision below dilutes the meaning of "engaged primarily" in the statute so that any entity secondarily involved in building and construction is authorized to engage in restraints of trade and preferences which are in conflict with the antitrust laws of the nation. It is respectfully submitted that such a novel interpretation of the statute's clear language should not be made without this Court's review.

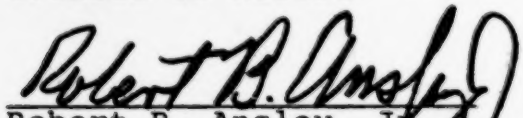
CONCLUSION

The decision of the court below

interprets the language of Section 8(f) of the NLRA in a way clearly in conflict with the accepted usual meaning of the ordinary language of the statute and the policy of prohibiting unauthorized restraints of trade in the commercial world. It is essential that the Court review the decision below for, if left undisturbed, it would authorize unwarranted restraint of trade and preference which would promote the erosion of confidence among construction competitors that our system supports the equal opportunity to compete in the commercial markets of our nation. This issue is one of great legal and practical importance and should be decided by this Court.

Respectfully submitted,

Overton A. Currie
Counsel of Record



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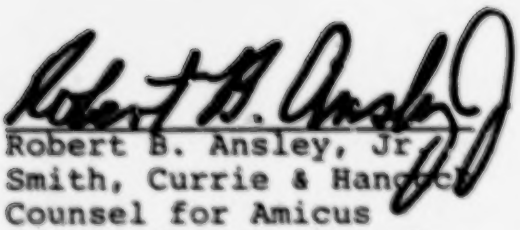
PROOF OF SERVICE
CERTIFICATE BY BAR MEMBER

I, Robert B. Ansley, Jr., one of the attorneys for Georgia Branch, Associated General Contractors of America, Inc., amicus curiae herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 4th day of April, 1985 I served copies of the foregoing Motion for Leave to File Amicus Curiae

Brief, Consent to Filing of Amicus Curiae Brief and Brief of Amicus Curiae on the several parties thereto, as follows:

1. On A.L. Adams Construction Co., petitioner, by mailing 3 copies in a duly addressed envelope, with first-class postage prepaid, to Ira Genberg, Stokes, Shapiro, Fussell & Genberg, 2300 First Atlanta Tower, Atlanta, Georgia 30383.

2. On Georgia Power Company, respondent, by mailing 3 copies, in a duly addressed envelope, with first-class postage prepaid, to Michael C. Murphy, Troutman, Sanders, Lockerman & Ashmore, 1400 Candler Building, Atlanta, Georgia 30043.



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